

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SEVENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 29542 of 1998

Between:

Syed Ali, S/o.late Osman Mohammed, aged about 48 years,

Occ: worked as Helper Allwyn Auto Division, Hyderabad,

R/o.16/4/40, Chanchalguda, Hyderabad

..... PETITIONER

AND

1 The Management of the Allwyn Limited,

Auto Division, Sanathnagar, Hyderabad

2. The Secretary, Industries and Commerce Department,

Govt. of A.P., Secretariat at Hyderabad.

3. The Chairman-cum-Presiding Officer, Additional

Industrial Tribunal-cum-the Additional Labour Court,

at Hyderabad

4 The Official Liquidator, O/o. The Registrar of Companies,

Kendriya Sadan, Sultan Bazar, Koti, Hyderabad.

(R4 is impleaded as per C.O., dated 10.1.2003 in

WPMPNo.212651 of 2002)

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly a writ of certiorari calling for the records pertaining to the award passed by the 3rd respondent herein in I.D.NO.98/93, dated 30.8.1993 and (i) quash the said award and modify the same order for continuity of service and other consequential benefits to the petitioner

herein besides the benefits of reinstatement and back wages with effect from as ordered by the 3rd respondent herein, (ii) direct the 1st and 2nd respondents to pay back wages and other consequential benefits from the date of the retrenchment, declaring the retrenchment as illegal, arbitrary and violative of Art.14 of the Constitution of India, and contrary to the mandatory provisions of I.D. Act and (iii) declare the award as bad and contrary to the mandatory provisions of the ID Act, and violating Art.141 of the Constitution of India.

Counsel for the Petitioner: MR.S.CHANDRASEKHAR

Counsel for the Respondent Nos1 and 2: Mr.R.P.R. Reddy

Counsel for the Respondent No.3: G.P. for Labour

Counsel for the Respondent No.4: Mr. Anil Kumar, S.C. for O.L.

The Court made the following :

ORAL ORDER:

This writ petition is filed by the workman being aggrieved by the award passed in I.D.No.98 of 1993, dated 30.8.1993 insofar as denial of continuity of service, backwages and other attendant benefits are concerned.

It is the case of the petitioner that he joined the services of the 1st respondent-organization on 20.12.1972 as Helper. While so, he became sick and applied for leave on 13.1.1980. While he was undergoing treatment in E.S.I. Dispensary, Dabeerpura, his services were illegally terminated without any enquiry. When he reported for duty along with fitness certificate, he was not allowed to join duty which amounts to illegal termination. With the above allegations, he raised a dispute and the same was referred to the Industrial Tribunal-cum-Labour Court, Hyderabad. Before the Industrial Tribunal-cum-Labour Court, the respondent-management filed a detailed counter stating that the petitioner unauthorisedly absented himself from duty for more than seven days apart from the fact that he was in the habit of absenting from duty without any intimation to the management. In 1977-78, the petitioner was removed from services for his unauthorized absence, but he was reinstated on sympathetic ground. Even for this misconduct, which is under examination, the petitioner never intimated that he fell sick and he was on E.S.I. leave from 13.1.1980 to 5.2.1980. No certificate from E.S.I. was submitted to the

management. Therefore, there was no option left to the management except to remove the petitioner from the rolls. Before the Labour Court, W.W.1 was examined on behalf of the workman and MWs.1 and 2 were examined on behalf of the management. Exs.W1 to W7 were got marked on behalf of the workman and Exs.M1 to M14 were got marked on behalf of the respondent-management.

After elaborate consideration of both oral and documentary evidence, the Labour Court found that there was no justification in the retrenchment of the petitioner from his services and the same is hit by the provisions of Section 25(F) of the Industrial Disputes Act, 1947 (for brevity "The Act"). Since, no notice was issued nor notice pay or compensation was paid to the petitioner before his services were terminated, the Tribunal directed reinstatement of the petitioner, but without backwages and without continuity of service for 13½ years. Admittedly, the dispute raised by the petitioner was referred to the Industrial Tribunal only in 1993 and till such time, what the petitioner was doing and what proceedings he initiated are not available on record. Therefore, it must be deemed that the petitioner raised the dispute only after 13½ years. In view of the delay and latches on the part of the petitioner, the Labour Court has rightly denied the continuity of service and backwages. Thought, it is a case hit by the provisions of Section 25(F) of the Act, the Labour Court considered the same while exercising the powers vested in it under Section 11(A) of the Act. Therefore, I am of the considered opinion that the Labour Court has not committed any error in denying the backwages and continuity of services in the peculiar circumstances of the case.

The writ petition is devoid of merit and is liable to be dismissed.

Accordingly, the writ petition is dismissed. No order as to costs.

(C.V. RAMULU, J.)

27th June, 2005

bcj

To

1 The Management of the Allwyn Limited,
Auto Division, Sanathnagar, Hyderabad

2. The Secretary, Industries and Commerce Department,
Govt. of A.P., Secretariat at Hyderabad.

3. The Chairman-cum-Presiding Officer, Additional
Industrial Tribunal-cum-the Additional Labour Court,
at Hyderabad

4 The Official Liquidator, O/o. The Registrar of Companies,
Kendriya Sadan, Sultan Bazar, Koti, Hyderabad.

5 Two C.Cs. to the Government Pleader for Labour, High Court
Buildings, Hyderabad (OUT)

6 Two C.D. copies